No. 175.
Motion as to taxation of costs.

Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk

Filed Oct. 27, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 175.

HENRY H. BOCKFINGER, APPELLANT,

vs.

JOHN W. FOSTER ET AL.

MOTION FOR AN ORDER IN THE MATTER OF TAXATION OF COSTS FOR PRINTING RECORD.

JAMES R. KEATON,
Attorney for Appellant.

(18,289.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4532

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 175.

HENRY H. BOCKFINGER, APPELLANT,

vs.

JOHN W. FOSTER ET AL., APPELLEES.

Motion for an Order in the Matter of Taxation of Costs for Printing Record.

Now comes the above-named appellant, by his attorney, James R. Keaton, and moves the court to authorize and direct the clerk to print the record filed in this cause upon payment by the appellant of the costs and fees calculated upon that portion of the said record other than "Exhibit A," attached thereto, for the following reasons:

It appears that the record as filed in this court consists of 124 pages of matter properly and necessarily included, the greater portion of which should be printed, to which, however, has been added as "Exhibit A," through the oversight or error of counsel in the court below, 1,044 pages, which include a duplicate copy of the testimony and other pro-

ceedings taken at the trial in the United States land office at Guthrie, Oklahoma, of the issues arising between the homestead and town-site claimants for the entire west half of section 8, township 16 north, of range 2 west, I. M., all of this added matter as "Exhibit A" being now unnecessary and unavailable for the purpose of determining any of the issues now involved in said above-entitled cause, and the parties thereto have stipulated that it is not necessary to be and shall not be printed.

The clerk of this court, however, considers it his duty, under the last clause of rule 10, to require the appellant to pay the regular fee for supervision of this portion of the record, though the stipulation above mentioned makes it wholly unnecessary and impossible for him to perform any service in relation to the 1,044 pages thereby eliminated. The fee, calculated under the rule, for such supervision of the unprinted matter contained in said "Exhibit A" so attached to the record herein amounts to $665, whereas the fee for the actual supervision of the printing of the record proper, most of which is to be printed, amounts to only $125.

While it is not intended by this motion to question the correctness of the interpretation placed upon said last clause of rule 10 by the clerk, it is respectfully submitted that, in this instance, such interpretation works a hardship entirely out of proportion to the proper value of the clerk's services, and such as is not within the contemplation of the rule.

Appellant, therefore, prays that, in view of the exceptional character of the record in this case and the peculiar circumstances under which said hardship has been cast upon him, this court pass an order which will authorize the

clerk to print the record upon the payment of the fees properly calculable upon the record proper after excluding said portion contained in said "Exhibit A," and thereby relieve this appellant from the payment of an unearned and unnecessary fee.

Respectfully submitted.

JAMES R. KEATON,
Attorney for Appellant.

Service of a copy of the foregoing motion is hereby accepted by counsel for the appellees in the above-entitled cause. It is agreed by the undersigned that the printing of "Exhibit A," mentioned in the motion, is unnecessary for the proper presentation and consideration of the questions involved in the cause; and accordingly a stipulation to omit such "Exhibit A" in the printing of the record has been entered into.

MARSDEN C. BURCH,
Counsel for Appellees.